



SUQUAMISH TRIBAL GAMING COMMISSION

P.O. Box 527

Suquamish, WA 98392

November 15, 2006

By fax to: 202-632-0045

Philip N. Hogen, Chairman
National Indian Gaming Commission
1441 L Street NW, Suite 9100
Washington, DC 20005

Re: Comments on Proposed Class II Rules

Dear Chairman Hogen:

I am the Chairperson of the Suquamish Tribal Gaming Commission (the "Commission"), the gaming regulatory body of the Suquamish Tribe, located on the Port Madison Indian Reservation, Washington. I am writing on behalf of the Commission to oppose the NIGC's proposed rules regarding classification standards for Class II gaming, and the related definition for electronic or electromechanical facsimile.

1. The Proposed Rules Do Not Clarify or Interpret the Law; They Seek to Change It.

We believe that the proposed rules go well beyond the appropriate role of agency rulemaking. That role is to interpret and clarify existing statutes, not to attempt to change those laws.

Both the courts and the NIGC itself have made determinations that specific games are properly categorized as Class II under the Indian Gaming Regulatory Act. Under the proposed rules, however, those games already determined to be Class II will apparently be considered Class III. We believe that this is clear evidence that the proposed rules go beyond interpretation of IGRA. Instead, the proposed rules amount to an attempt by the NIGC to change IGRA – something that only Congress has the legal authority to do.

2. The Piecemeal Preparation of the Proposed Rules, Proposed Technical Standards, and an Economic Impact Study Have Deprived Tribes of Meaningful Opportunity to Participate in the Rulemaking.

The proposed definitions and classification standards were published on May 29, 2006. The proposed technical standards necessary to analyze the proposed rules were not published until August 11, 2006. Those Federal Register notices of the proposed

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definitions, classification standards, and technical standards all made claims that the proposed rules would have limited economic impact. An actual analysis of the potential economic impact of the proposed rules, however, was not released by the NIGC until November 6, 2006, less than ten days before the deadline for these comments. The belated economic impact study directly contradicts the earlier rulemaking notice, and shows an impact far in excess of \$100 million per year.

This piecemeal preparation of the proposed rules and the economic impact study has prevented the NIGC itself from fully appreciating the impact of its proposals, and has made it impossible for Tribes and tribal gaming regulators to participating meaningfully in the rulemaking process.

3. The Proposed Rules Will Leave Tribes Even More at the Mercy of States that Demand Taxation of Indian Gaming under the Guise of "Revenue Sharing."

Class II electronic games are the only economically viable alternative that tribes now have when a state either refuses to renegotiate limits on Class III gaming machines, or, despite IGRA's prohibition on state taxation, demands "revenue sharing" as part of such renegotiation. The proposed rules would largely eliminate that alternative.

At the September 19 public hearing on the proposed rules, a representative of the Washington State Gambling Commission ("WSGC") urged even stricter limits on Class II gaming than those proposed by the NIGC. The draft agenda for the WSGC's November 15 meeting includes the following subject: "If the state and tribes were to agree to revenue sharing like other states and tribes have done, how much money might flow to the state?" We do not believe that this is a coincidence. The NIGC should not shift IGRA's balance between tribal and state interests by eliminating the only practical alternative that tribes have when a state seeks to circumvent IGRA's prohibition on taxation.

For the foregoing reasons, I strongly urge you to reconsider the proposed rules, develop a new proposal with full tribal participation, and not publish the new proposal until an analysis of its potential economic impact has been completed and considered both by the NIGC and by tribes and their gaming regulators.

Very truly yours,



Tina Jackson, Chairperson
Suquamish Tribal Gaming Commission

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Date: November 15, 2006

FACSIMILE COVER SHEET

To: Philip Hogen, Chairman
National Indian Gaming Commission
Attention: Penny Coleman, Acting General Counsel

From: James Weber

Fax: 202-632-0045 / 202-632-7066

Legal Department

Pages including cover sheet: 3

() faxed by Neoma Boure- ext. 8492

() faxed by Linda Tabafunda - ext. 8491

() faxed by Marguerite McKnight - ext. 8493

() Hard Copy to Follow

Message: Comments on Proposed Class II Rules

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